

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YACOUN HANNA,
d/b/a Fleming Food Shoppe,

Plaintiff,

Case No. 04-74627

v.

District Judge Gerald E. Rosen
Magistrate Judge R. Steven Whalen

UNITED STATES OF AMERICA, et al.

Defendants.

**ORDER RESCINDING REPORT AND RECOMMENDATION
AND SETTING DATE FOR ORAL ARGUMENT**

On November 1, 2005, the undersigned filed a Report and Recommendation (R&R), recommending that the Complaint be dismissed pursuant to Fed.R.Civ.P. 37(b)(2). *See* Docket #23. That R&R was premised, in part, on the assumption that Plaintiff had not responded to either the underlying Motion for Sanctions filed on July 12, 2005 (Docket #14), or the Court's order to show cause entered on September 26, 2005 (Docket #20). As shown by the docket entries in this case, that assumption was incorrect. On October 7, 2005, Plaintiff filed a Response to Motion for Sanctions (Docket #21) which purports to excuse Plaintiff's alleged non-compliance with this Court's previous discovery order, and argues

that dismissal is not an appropriate sanction.¹

Accordingly, the Report and Recommendation filed on November 1, 2005 [Docket #23] is RESCINDED.

Counsel for both parties will appear for argument on Defendant's Motion for Sanctions (Docket #14) on TUESDAY, DECEMBER 13, 2005 at 10:00 a.m., in Courtroom 662, Theodore Levin United States Courthouse, Detroit, MI.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: November 22, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on November 22, 2005.

S/Gina Wilson
Judicial Assistant

¹Viewed as a response to the Defendant's original motion, which had been filed on July 12, 2005, this pleading was grossly untimely. Viewed as a response to the order to show cause, it was untimely by one day.